



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2010

Mr. Robert J. Perez  
Shelton & Valadez, P.C.  
For City of Hondo  
600 Navarro, Suite 500  
San Antonio, Texas 78205

OR2010-14501

Dear Mr. Perez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 394316.

The City of Hondo (the "city"), which you represent, received two requests from the same requestor for four categories of information related to the 2004, 2008, and 2009 audits. You state that the city has no information responsive to portions of the request.<sup>1</sup> You also state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.116 of the Government Code. You also notified Darilek, Butler & Associates (the "auditor") of the request and of the company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

---

<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

You state the submitted records contain information regarding accounts that are not the subject of the request. We agree such information is not responsive to the present request for information. The city need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we must address the city's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, the city received the request for information on July 2, 2010. You state that the city was closed for business on July 5, 2010. Accordingly, the city's ten-business-day deadline was July 19, 2010. However, the city's request for a ruling from this office was sent by facsimile on July 20, 2010. Consequently, we find the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

You seek to withhold the submitted information under section 552.116 of the Government Code. However, section 552.116 is a discretionary exception under the Act and does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, your claim under section 552.116 of the Government Code does not provide a compelling reason for non-disclosure, and none of the submitted information may be withheld on that basis.

Because third party interests can provide compelling reasons to overcome this presumption, we will consider whether or not the submitted information is excepted from disclosure under the Act on that basis. An interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, the auditor has not submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate the auditor's proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6

(1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Accordingly, the city may not withhold the submitted information based upon the proprietary interests of the auditor. As no other exception to disclosure is raised, the submitted information must be released to the requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 394316

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Richard Krampe  
Darilek, Butler & Associates, P.L.L.C.  
2702 North Loop 1604 East, Suite 202  
San Antonio, Texas 78232  
(w/o enclosures)